

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO. GDAHCV2019/0116

**In the matter of a claim by the Claimant applying for an administrative order pursuant to Part 56
of the Civil Procedure Rules 2000**

and

In the matter of sections 1, 11, 13, 16, 83, 84 and 101 of the Constitution of Grenada

BETWEEN:

RACHEL GLENNA M. ROBERTS

Claimant

and

**[1] THE PUBLIC SERVICE COMMISSION
[2] ~~ATTORNEY GENERAL OF GRENADA~~**

Defendant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Benjamin Hood for the Claimant

Ms. Karen Samuel with her Ms. Carah St. Paul for the Defendant

2022: May 3; 18 (Closing submissions)

July 1

[Re-issued on 18th July 2022]

JUDGMENT

- [1] **GLASGOW, J.:** The claimant, Rachel G. M. Roberts, (Ms. Roberts) is a public officer and former President of the Grenada Public Workers' Union (PWU). Ms. Roberts has been employed in the public service of Grenada for over 29 years and holds the substantive post of Senior Administrative Officer (Grade K) (SAO). By letter dated 15th January 2019, the acting Chief Personnel Officer at the Public Service Commission (PSC) advised Ms. Roberts that she was

being assigned to the Corporate Affairs and Intellectual Property Office (CAIPO) with effect from 28th January 2019, until further notice.

- [2] Having received that letter from the PSC, Ms. Roberts filed an originating motion on 15th March 2019 against the PSC and the Attorney General of Grenada seeking declarations challenging her transfer to CAIPO, among other reliefs. Ms. Roberts filed an amended originating motion on 7th May 2019 to include further declarations for alleged breaches of her constitutional rights. On 9th March 2020, this court granted an application filed by Attorney General of Grenada to be removed as second defendant to the proceedings.
- [3] At trial, counsel for Ms. Roberts, Mr. Benjamin Hood, indicated to the court that, having regard to the Attorney General being removed as the second defendant in the proceedings, the pleadings in respect of whether the PSC's decision was influenced by the dictates of the then Prime Minister of Grenada and/or Government of Grenada are now otiose and will not be pursued by Ms. Roberts.

Ms. Roberts' evidence

First affidavit

- [4] Ms. Roberts' states ¹ that she is an officer in the public service of Grenada for the last twenty-nine years and six months. Ms. Roberts began her career in the public service as a Clerk Typist. As at the hearing of this claim, her substantive post is that post of Senior Administrative Officer (SAO) in the Ministry of Health, Social Security and International Business. The post of SAO is the most senior administrative post in a ministry, save the post of Permanent Secretary. Ms. Roberts is the holder of a certificate in Public Administration (1999); a Bachelor's of Science in Management (2004); Master's in Business (2007) and a Master's in Business Administration (2009).
- [5] Ms. Roberts avers that she is a member of PWU and actively participated in its activities. In March 2017, she was elected President of the Union. By way of memorandum from the Chief Personnel Officer dated 12th June, 2018, she was transferred to the post of SAO in the Ministry of Education with effect from 18th June, 2018. Ms. Roberts remained in that position until on or

¹ Affidavit of Rachel Roberts filed on 15th March 2019

about 15th January, 2019 when she received the letter from the acting Chief Personnel Officer which purported to remove her from that post and assign her to CAIPO with effect from 28th January 2019 until further notice.

[6] Ms. Roberts' opposes her transfer and/or assignment and in summary avers that:

- (1) No post of SAO existed at CAIPO for the financial year of 2019. There was no budgetary provision or emoluments for that post at CAIPO.
- (2) She was not assigned a specific post at CAIPO. She avers that it appears that her duties were left to be assigned or directed by the Registrar of CAIPO.
- (3) She was removed from her post as SAO, (a post which is second to the post of Permanent Secretary) for an indefinite and unspecified period.
- (4) She was instructed to report to the Registrar of CAIPO. The Registrar of CAIPO reports to a Permanent Secretary.
- (5) Having regard to the fact that there was no post of SAO at CAIPO, she is of the view that she is subject to the arbitrary instructions of the Registrar of CAIPO.
- (6) Up to the date of affidavit, she has not been issued with a job description or list of duties.
- (7) Having received no explanation for her transfer, she views the transfer as one designed to punish her.
- (8) The act of removing her from the post of SAO and subsequent transfer to CAIPO entitles her to pension and retirement benefits in accordance with section 84(8) of the Constitution of Grenada.
- (9) She does not dispute that the PSC has the power to transfer her, but states that she should be transferred to an office of equivalent status.

Further affidavit

[7] Ms. Roberts in her further affidavit filed on 7th May, 2019 deposes that the PSC's decision to transfer her from the post of SAO was done to frustrate and discourage her as a public officer. Further, Ms. Roberts avers that her removal was illegal for the following reasons:

- (1) There is no equivalent administrative post as that of her substantive office or higher at CAIPO.
- (2) She has not been provided with a post in which she is to function at CAIPO.
- (3) The structure of CAIPO does not cater to the duties of her office.

(4) She is being asked to perform other courses in order to acquire skills to do some tasks at CAIPO.

(5) Her qualifications did not match any senior post at CAIPO.

[8] Ms. Roberts avers that on 3rd May 2019, some three months after her receiving her letter of transfer, the Registrar of CAIPO indicated to her that she intends to assign her the following duties:

- (1) To do due diligence checks on applications for the registration of companies and to send letters to the applicants advising them on areas of defect or default;
- (2) To supervise a project for the computerisation of the files at CAIPO; and
- (3) To certify copies of official documents.

[9] In respect of relief, Ms. Roberts asks the court to find that her removal was:

- (1) occasioned or influenced by the Government contrary to section 83(12) of the Constitution;
- (2) an infringement of her enjoyment of freedom of assembly pursuant to section 11 of the Constitution;
- (3) an infringement of her right against discrimination pursuant to section 13 of the Constitution; and
- (4) a retirement in the post of SAO contrary to section 84(8) of the Constitution.

PSC's evidence

Naomi Jeremiah's evidence

[10] On 17th June 2019, Ms. Naomi Jeremiah (Ms. Jeremiah), Acting Chief Personnel Officer of the PSC filed an affidavit in response to Ms. Roberts' originating motion (as amended) and her affidavits. Ms. Jeremiah admits that Ms. Roberts was appointed to the public service in the position of Clerk Typist on 1st September 1989. Her appointment letter dated 7th July, 1992 indicated at paragraph (e) thereof that "*you will be liable to transfer to any post of equivalent status within Grenada*". Ms. Jeremiah avers that prior to Ms. Roberts' assignment to CAIPO she has held many positions in the public service and outlines the various assignments.

[11] Further, with respect to Ms. Roberts' transfer, Ms. Jeremiah states that:

- (1) CAIPO is a department within the public service.

- (2) Ms. Roberts was not required to initiate a transfer request before the PSC made the decision to transfer her.
- (3) Ms. Roberts served at the Supreme Court Registry for two months in the year 2000.
- (4) The PSC formed the view that Ms. Roberts was the appropriate person to be transferred to CAIPO, having regard to her prior working experience at the Supreme Court Registry when CAIPO was under its portfolio;
- (5) Although Ms. Roberts' post has not been "*fleshed out...owing to fiscal constraints*", the PSC remains committed to applying already available human resources to attend to the needs of the public service.
- (6) Ms. Roberts continues to be paid from the Ministry where she has her substantive appointment.
- (7) On different occasions Ms. Roberts was transferred to act in different posts other than her substantive post. The absence of her substantive post at the departments to which she was transferred was a non-issue.
- (8) All of her transfers by the PSC were done to satisfy the exigencies of the service.
- (9) Ms. Roberts' current assignment at CAIPO does not deprive her of her rank or seniority within the public service since she continues to hold and is remunerated in her substantive post as a SAO.
- (10) Her transfer to CAIPO is not definitive and her substantive post remains that of SAO at the Ministry of Health, Social Security and International Business.
- (11) Ms. Roberts' transfer was not done as a means of punishment, since there have been no disciplinary actions taken against her.
- (12) Ms. Roberts has not been terminated from the public service or removed from her substantive post.

[12] With respect to Ms. Roberts' further affidavit, Ms. Jeremiah states that the PSC had no obligation to discuss Ms. Roberts' transfer to CAIPO. CAIPO is a department within the Ministry of Legal Affairs and there is a SAO appointed to that Ministry. Ms. Jeremiah also denies that CAIPO does not include administrative posts at Ms. Roberts' level or higher. CAIPO is relatively new and it is correct that there is no post that matches Ms. Roberts' responsibility. The existence of a SAO within a Ministry did not prevent Ms. Roberts' transfer to that Ministry in 2016. Moreover, Ms. Jeremiah denies that the duties assigned to Ms. Roberts by the Registrar of CAIPO are trivial. She claims that the tasks assigned to Ms. Roberts are senior tasks in line with Ms. Roberts' rank within the public service. In view of the above, Ms. Jeremiah asks the court to find that Ms.

Roberts is not entitled to any of the reliefs sought in her amended originating motion and that her claim should be dismissed with costs to the PSC.

Annette Henry's evidence

[13] Ms. Annette Henry, (Ms. Henry), Registrar of CAIPO tendered evidence on behalf of the PSC. In summary, Ms. Henry deposes that:

- (1) As Registrar, she is the most senior person in that office and is responsible for overseeing the functions of that office and the duties of its staff.
- (2) CAIPO is a small unit within the Ministry of Legal Affairs and is responsible for regulatory oversight in relation to filings for businesses and all intellectual property matters.
- (3) At the date of Ms. Roberts' assignment, she was tasked with determining the duties that would be assigned to Ms. Roberts.
- (4) Having regard to Ms. Roberts' rank as SAO she appreciated that Ms. Roberts would be a senior member of staff at CAIPO.
- (5) The Ministry of Legal Affairs already has a SAO and the most senior vacant post already established in CAIPO was below Ms. Roberts' rank.
- (6) Therefore, she formulated Ms. Roberts' duties which were consistent with her grade and status as SAO.
- (7) She indicated to Ms. Roberts that CAIPO has more than enough work between the offices of Registrar and Deputy Registrar and that a portion of their portfolio can be assigned to her, given her seniority.

Claimant's submissions

[14] It is Ms. Roberts' case that the PSC's decision to transfer her to CAIPO until further notice was unlawful, unreasonable and in effect a removal from her office as SAO. Counsel for Ms. Roberts, Mr. Benjamin Hood, recites the principle that the PSC has the power to transfer and remove public officers to another office in the public service provided that the officer does not lose any salary benefits; see the Court of Appeal judgment of **Willan Thompson and another v The Attorney General of Grenada and another**². Mr. Hood argues that in order for the PSC to

² GDAHCVAP2015/0010

properly transfer a public officer, the transfer must be made to a specific public office or post in the public service.

- [15] Mr. Hood points out that Ms. Roberts was not assigned to any particular post at CAIPO. Therefore, having regard to the language used in the PSC's notice dated 15th January 2019, it can only be interpreted as an exercise of its power to transfer Ms. Roberts. This transfer, counsel says, was unlawful and unreasonable since Ms. Roberts was not assigned a specific post. Moreover, the PSC's decision to transfer Ms. Roberts is also, in effect a removal from her substantive post of SAO at the Ministry of Health since she no longer performs those duties and her previous office remains vacant.
- [16] It is also Ms. Roberts' case that her transfer was, in effect a removal or retirement from office of SAO pursuant to section 84 (8) of the Constitution. Mr. Hood relies on the cases of **Duncan v the Attorney General of Grenada**³ and **Grenada Technical and Allied Workers' Union and another v Public Service Commission and others**⁴ which, he contends, ruled on the circumstances in which benefits under section 84(8) of the Constitution would have to be paid to a civil servant. Further, counsel's position is that, given the PSC's actions and in view of the absence of any reasons for its actions, the transfer may only be construed as a removal or retirement from office for the purpose of reorganisation of the Ministry of Health. Therefore, Ms. Roberts ought to be treated as being retired in accordance with section 84(8) of the Constitution.
- [17] Mr. Hood further argues that the PSC's decision to transfer Ms. Roberts to CAIPO until further notice contravenes her fundamental right not to be treated in a discriminatory manner pursuant to section 13(2) of the Constitution. Counsel refers to the PSC's evidence that there are three other SAO's in the public service, namely Ms. Agatha Alexis, Mrs. Glenna Neptune-Ross and Mrs. Margaret Jawahir. These other SAOs were all transferred to specific offices within a Ministry to carry out administrative duties which were in line with their substantive appointments as SAOs. Counsel also observes that those three officers were all assigned to posts within departments in the public service. Those posts had budgetary allocations and assigned duties to be executed. In light of the above, Mr. Hood concludes that it is clear that Ms. Roberts was discriminated against by the PSC.

³ Grenada Civil Appeal No. 13 of 1997 per Byron CJ.

⁴ GDAHCVAP2003/0011 per Saunders JA at paras. 15-16

[18] In further submissions filed on 18th May 2022, Mr. Hood urges this court to have regard to the findings of the Court of Appeal in **Gemma Bain Thomas v Attorney General of Grenada and another**⁵, particularly at paragraph 101 of the judgment, where Blenman JA stated that:

“The learned trial judge, in my view, quite correctly stated that equivalency is not restricted only to the pay and emoluments to which the officer is being transferred. It must include such factors as responsibility, status, challenges of the posts, rank in the public service hierarchy and I would add qualification.”

[19] Counsel reiterates that, Ms. Roberts was not transferred or assigned to a specific post and was subject to a level of uncertainty in relation to her post after being a senior public officer for a number of years. This, counsel suggests, affected Ms. Robert’s status within the public service. In essence, Ms. Roberts complains that her office or post at CAIPO is not an “office of equivalent status” to her substantive post as SAO.

Defendant’s submissions

[20] Counsel for the PSC, Ms. Karen Samuel, in her submissions filed on 21st April 2022 adverts to the definition of the word “transfer” outlined in section 2 of the PSC Regulations :

“...the conferment whether permanently or otherwise, of some public office, other than that to which the officer was last substantively appointed, not being a promotion...”

[21] Ms. Samuel agrees that the power to appoint, includes the power to transfer in accordance with section 84 (1) of the Constitution. Ms. Samuel relies on **Grenada Technical and Allied Workers’ Union et al v Public Service Commission et al**⁶ to support this view. Ms. Samuel refers to paragraph 6 of Ms. Roberts’ further affidavit wherein she acknowledges that her assignment by the PSC was a transfer. The PSC maintains that Ms. Roberts was transferred. Ms. Samuel explains that Ms. Roberts’ transfer was made “until further notice”. This, counsel suggests, was a temporary act, even though on its face it appears to be for an indefinite period. Ms. Samuel posits that such assignments have been recognised by the courts as capable of being temporary in nature and commends paragraph 13 to 14 of Lady Arden’s judgment in **Chief Fire Officer and Another v Felix-Phillip and Others**⁷.

[22] Ms. Samuel is of the view that the PSC’s failure to specify a post in the transfer notice given to Ms. Roberts does not conflict with the exercise of its duties or power to transfer as contemplated

⁵ GDAHCVAP2015/0013

⁶ GDAHCVAP2003/0011 at para. 20

⁷ [2020] UKPC 12

by the Constitution. Ms. Samuel gave further reasons why the transfer was lawful which I summarise as follows:

- (1) It is recognised in law that the power to appoint includes the power to transfer;
- (2) Ms. Roberts' substantive office is that of SAO;
- (3) The department of CAIPO was growing and as such required new personnel. Therefore, Ms. Roberts was transferred to fulfil those needs;
- (4) Ms. Roberts continued to receive all emoluments that she hitherto enjoyed as SAO;
- (5) Ms. Roberts was not required to report to an officer below her rank or grade;
- (6) Ms. Roberts' substantive post is not a "particular office" and as such the PSC is the sole constitutional decision maker;
- (7) The PSC did not delegate its power to anyone else to determine Ms. Roberts' office.

[23] With respect to Ms. Roberts' contention that the new post was beneath her status as a long standing public officer, Ms. Samuel denies that this is the case and reiterates that Ms. Roberts' transfer was a temporary assignment to perform under her substantive post. Counsel cites dicta in **Francis v The Attorney General**⁸ in support of her reasoning. Ms. Samuel argues that it was proper for the PSC to rely upon the Registrar of CAIPO as the Head of that Department to formulate the duties that Ms. Roberts was to perform in accordance with section 52 of PSC Regulations.

Defendant's submissions on section 84(4) of the Constitution

[24] In relation to Ms. Roberts' contention that she was "removed" from her office, Ms. Samuel repeats her position that Ms. Roberts was transferred to an office where she retained her emoluments and status as a SAO. Ms. Samuel maintains that Ms. Roberts only experienced a change in duties. Ms. Samuel relies on Byron CJ's pronouncements in **Duncan v The Attorney General**⁹ and Lord Diplock in **Endell Thomas v The Attorney General of Trinidad and Tobago**¹⁰ in relation to how the courts have construed the word "remove" from office.

[25] Ms. Samuel maintains that where a claimant has pleaded the protection of section 84(8) of the Constitution they must prove that they have been required to retire. Counsel alludes to **Francis**

⁸ [2002] ECSCJ No. 194 at para. 27

⁹ Grenada Civil Appeal No. 13 of 1997 at pages 6-7

¹⁰ [1981] 3 WLR 601 at page 610

v The Attorney General¹¹, where Barrow J found that the alleged reorganisation upon which Mr. Francis desired to establish his case had not occurred within the Ministry from which he was transferred, but within the Ministry to which he was transferred. Therefore, the allegation that he was removed from office due to the reorganisation of his Ministry was not available so as to afford him relief pursuant to section 84(8) of the Constitution. Ms. Samuel points out that that the facts of the present case are not in line with cases, such as **Francis, Gemma Bain-Thomas v The Attorney General** and another and **Donovan v The Attorney General**¹² where the courts have deemed claimants to have been required to retire from office. Ms. Samuel sought to distinguish the **Gemma Bain-Thomas** case from this case in that, in the Gemma Bain-Thomas case, there was no equivalent post in the public service to which Ms. Bain-Thomas could have been transferred. This factor, counsel expounds, significantly, weighed against the decision to transfer in that case. Counsel surmises that Ms. Roberts has failed to lead evidence to establish that the post of SAO was unique, the post of SAO in the Ministry of Health was abolished or that the Ministry was undergoing reorganisation, or that she has been deprived of the opportunity to work.

Defendant's submissions on the right to work

[26] In respect of Ms. Roberts' contention that her transfer has deprived her of the right to work, Ms. Samuel's response is that the right to work is not separately enforceable as it is not property within the meaning of section 6(1) of the Constitution. Ms. Samuel relies on the cases of **Campbell Rodrigues v The Attorney General**¹³, **Blomquist v The Attorney General of the Commonwealth of Dominica**¹⁴ and **Strachan v The Attorney General**¹⁵. In any event, counsel argues, Ms. Roberts has failed to adduce evidence to demonstrate that her assignment has in any way deprived her right to work or earn a livelihood.

Defendant's submissions on discrimination

[27] It is Ms. Roberts' case that the PSC's decision to transfer her to CAIPO contravenes her right not to be treated in a discriminatory manner. On that subject, Ms. Samuel relies on the Privy

¹¹ [2002] ECSCJ No. 194

¹² [

¹³ [2007] UKPC 65 at para. 12

¹⁴ [1987] UKPC 5

¹⁵ GDAHCV2018/0354 at paras. 23-25 and 44-48

Council pronouncements in the case of **Bhagwandeem v The Attorney General of Trinidad and Tobago**¹⁶. Lord Carswell held at paragraph 18 of the judgment that:

“A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hutton in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, [2003] 2 All ER 26 at para 71 as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”

[28] Ms. Samuel says that in view of Lord Carswell’s pronouncements in **Bhagwandeem** it is apparent that Ms. Roberts has failed to present any comparators. Further, Ms. Roberts has only made a bare assertion at paragraph 10 of her further affidavit that several other officers have been promoted to serve as permanent secretaries. What Ms. Roberts has advanced is that she was targeted because of her political opinion. However, she has failed to put forward any evidence showing a connection between the PSC’s decision and any political affiliation she may hold.

[29] With respect to Ms. Roberts’ claim for general and exemplary damages, Ms. Samuel refers to CPR 56.7(4)(b)(ii) which stipulates that a claimant who seeks damages must specify and particularise the bases of their losses in their evidence. Counsel states that Ms. Roberts has failed to provide those particulars. Counsel suggests that in this case the appropriate award to vindicate constitutional breach is vindictory damages and not exemplary damages as pointed out by Lord Hope in **Innis v the Attorney General of Saint Christopher and Nevis**¹⁷. Counsel submits that should the court find constitutional breach, the award ought to be nominal.

Discussion and Analysis

Whether the transfer was unlawful?

[30] The power to appoint public officers to offices in the public service resides in the PSC. Section 84 (1) of the Constitution of Grenada prescribes:

“84. Appointment, etc., of public officers

(1) Subject to the provisions of section 91 of this Constitution, **the power to appoint persons to hold or act in offices in the public service** (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting

¹⁶ [2004] UKPC 21 at para. 18

¹⁷ [2008] UKPC 42 at paras. 23-28

in such offices and the power to remove such persons from office, and the power to grant leave, **shall vest in the Public Service Commission.**" (My emphasis)

- [31] It is well-established and I dare say common practice for public officers to be transferred to other officers within the public service whether permanently or otherwise. It is also by now accepted that the PSC's power to appoint a public officer also includes the power to transfer public officers within and outside of the public service. Saunders JA in **Grenada Technical and Allied Workers' Union et al v Public Service Commission et al**¹⁸, articulated the position thusly:

"I think the learned trial Judge effectively dealt with this point in the judgment when he stated at paragraph 11:

'I do not accept that because that power is not expressed it means that the power does not exist. The power to transfer, for example, is not expressed but no one can doubt that the PSC has the power to transfer persons within the service from one office to another. Such a transfer can be either on appointment or on temporary assignment. That latter type of transfer is in fact a secondment...Given that the PSC has the power to second within the service there is no reason why, subject to the proper safeguards, it should not be able to second outside the service. The difference with outside secondment is that it must be by agreement, it cannot be imposed upon the officer just as it cannot be imposed upon the receiving employer...."

- [32] In **Willan Thompson et al v The Attorney General of Grenada et al**¹⁹, Blenman JA stated at paragraph 32 of the judgment that:

"It is trite law that the power to appoint carries with it the power to remove and transfer. It is therefore axiomatic that the Public Service Commission, which has the power to appoint police officers, equally has the power to transfer those officers. I am fortified in the above view by regulation 2 of the Public Service Regulations, 1969 that provides for the transfer of public officers ... I have no doubt that the Public Service Commission has the power to transfer public officers within the public service."

- [33] Ms. Roberts was confirmed as a public officer in the public service by letter of appointment dated 7th July, 1992 received from Ms. Beryl Isaac, then Chief Personnel Officer of the PSC. In that letter Ms. Isaac informed Ms. Roberts that the PSC took the decision to confirm her appointment as Typist in the Ministry of Finance. Further, in the letter Ms. Isaac advised Ms. Roberts that she *"...will be liable to transfer to any post of equivalent status within Grenada"*.

¹⁸ GDAHCVAP2003/0011 at para. 20

¹⁹ GDAHCVAP2005/0010

[34] With respect to Ms. Roberts' present challenge to her transfer, the facts reveal that on 14th January, 2019 the PSC took the decision to transfer her to CAIPO. By letter dated 15th January 2019, the PSC sent a letter to Ms. Roberts which reads:

“Public Service Commission
St. George's
Grenada, W.I.

15th January, 2019

Dear Madam,

I am directed to inform you that on 14th January, 2019, the Public Service Commission assigned you to the Corporate Affairs and Intellectual Property Office (CAIPO), Ministry of Legal Affairs with effect from 28th January, 2019, until further notice.

You will be subject to the provisions of the Public Service Commission Regulations, the Civil Service Staff Orders, the Public Finance Management Act and other Regulations in force from time to time.

You will be directly responsible to the Registrar, Corporate Affairs and Intellectual Property Office (CAIPO) and through her to the Permanent Secretary, Ministry of Legal Affairs for the proper performance of your duties.

Yours faithfully,

[SIGNED]

.....
CHIEF PERSONNEL OFFICER (AG.)

Miss Rachel Roberts
u.f.s. Permanent Secretary
Ministry of Legal Affairs
ST. GEORGE'S

Absence of a specific post

[35] It is uncontroverted that Ms. Roberts was transferred by the PSC to CAIPO without being assigned to a specific post or specific duties upon her transfer. Indeed, the PSC's letter of transfer dated 15th January 2019 did not indicate any specific office, duties nor rank or grade at CAIPO. The fact that Ms. Roberts was assigned to CAIPO without being assigned to a specific post is, in my view, prima facie unconstitutional. The PSC argues that the transfer was one contemplated by the Constitution. However I disagree for reasons which I will set out below.

- [36] For one thing, section 84 (1) of the Constitution specifically provides the PSC with the authority to appoint “**persons to hold or act in offices in the public service**”. The section itself therefore outlines the terms of the power it provides. The PSC is to appoint to a public officer to a public office. As recited above, the power to appoint includes the power to transfer the public officer to a public office. Section 111 of the constitution defines public office as an office of emolument within the public service. It needs no restating therefore that the power to transfer would in fact require the PSC to transfer to a specified post or office. It is quite apparent that this is not what happened in this case. By its own evidence given by Ms. Jeremiah, Ms. Roberts was transferred, whether on temporary assignment or not, to the CAIPO department without specifying an office or post to which she was being transferred.
- [37] It is not my desire to belabour the point, but one could see from section 2 of the PSC Regulations that the transfer did not meet the PSC’s own definition of transfer. The definition of transfer in the PSC’s regulations requires “**the conferment whether permanently or otherwise, of some public office**, other than that to which the officer was last substantively appointed...” More tellingly, Ms. Roberts’ letter of appointment received from then Chief Personnel Officer, Ms. Beryl Isaac, informed her in specific terms that she is only liable to be transferred to “*offices of equivalent status*” within the public service of Grenada. Ms. Roberts was not transferred to any public office or post. She was simply sent to CAIPO. The head of CAIPO, Ms. Henry, testifies that she advised Ms. Roberts that “*the Ministry of Legal Affairs already has a Senior Administrative Officer, and that the most senior vacant post as already established in CAIPO was below her rank, so I resolved that I would formulate duties for her consistent with her grade and status as SAO.*”²⁰ This evidence, in my view, further exposes the glaring illegality of the transfer.
- [38] CAIPO is a department within the Ministry of Legal Affairs .The evidence from the head of that department, Ms. Henry graphically exposes what transpired when Ms. Roberts arrived at CAIPO. Ms. Henry helpfully explains that there was no post or duties fitting the post of SAO when Ms. Roberts arrived at the doors of her office. Ms. Henry explains that the only post of SAO in the Ministry of Legal Affairs was already filled by another public officer. The PSC, having not transferred Ms. Roberts to a specified office or post as required both by the Constitution and the PSC’s regulations, left it up to Ms. Henry to work out what duties or office in her department would best suit someone who holds the office of SAO.

²⁰ Paragraph 16 of the affidavit of Annette Henry filed 17th June 2019

- [39] This entire affair appears to be a gross abdication of the PSC's constitutional obligations. The PSC was required to transfer Ms. Roberts to an office within the public service. I would also hold that the natural inference was that the PSC was obliged to ensure that there was a specific public office within the Ministry of Legal Affairs or more particularly, at CAIPO, to which Ms. Roberts was to be assigned or transferred before it issued the transfer notice. I would also find that this duty obligated the PSC to provide Ms. Roberts with information in the letter informing her of the transfer regarding the office to which she was being assigned or transferred. To the extent that none of this was done, the PSC acted without regard to its section 84(1) obligation and accordingly in breach of the protection guaranteed to public officers by that section when it sought to transfer Ms. Roberts to CAIPO by letter dated 14th January 2019.
- [40] The implications of holding otherwise are stark. It would mean that the PSC could simply send a public officer to a department without stating the office or post to which the officer was being assigned or transferred. The public officer would then be left to the whim or caprice of the individual head of department to fashion whatever duties he or she deems fit to suit whatever grade is held by the public officer. This, in my view, is not what the constitution contemplates. If the public officer is to be protected, in the true essence of what section 84 of the Constitution contemplates, then the act of transfer must include transfer to a specified office or post in the public service. Ms. Jeremiah's²¹ evidence reveals that the PSC has, in the past, "transferred" officers without specifying an office or post to which the officer is transferred. Ms. Jeremiah even testifies of a previous assignment of Ms. Roberts during the period of 27th September 2010 to 26th September 2011, where Ms. Roberts was "transferred" to Department of Public Administration without being assigned a specific or designated post.
- [41] To the extent that this is true, I find that such practices by the PSC are unconstitutional for the reasons that I have set out above. Moreover, I have not been referred to any condition of employment, law, authority or regulation in the PSC's regulations or the Staff Orders which authorises the PSC to transfer public officers to departments or Ministries where the public officer is not sent to a specific post or designated office. I have referred to the PSC's regulation which defines transfer as transfer to a public office. In any event, section 84 (1) of the Constitution is clear and any other law, policy or practice which is inconsistent with this provision is void to the extent of its inconsistency.

²¹ Affidavit of Naomi Jeremiah filed on 17th June 2019 at paragraph 8(e) (ix)

Equivalent post

[42] Ms. Roberts in her pleadings and evidence states that her tenure in the public service was made uncertain by reason of the PSC's failure to transfer her to a post or office at CAIPO coupled with the fact that no equivalent post of SAO existed at CAIPO. In view of what I have said above about the unconstitutionality of the PSC's actions in this case, this issue may be a moot one, but I address it for completeness.

[43] What amounts to an "equivalent" office or post in the public service has been the subject of recent elucidation by the Court of Appeal in **Gemma Bain-Thomas v The Attorney General of Grenada et al**²². In that case, Blenman JA stated at paragraph 101 of the judgment that:

"The learned trial judge, in my view, quite correctly stated that equivalency is not restricted only to the pay and emoluments grade to which the officer is being transferred. It must include such factors as responsibility, status, challenges of the posts, rank in the public service hierarchy and I would add qualification."

[44] I am of the view that the PSC had the additional burden of proving that the post to which Ms. Roberts was being transferred carried the same responsibility, rank and status of SAO. Apart from the PSC's assertions that Ms. Roberts continues to receive all the emoluments of SAO and that she continues to enjoy its status, there is no evidence that the duties assigned to Ms. Roberts by Ms. Henry were equivalent to the duties of an SAO.

[45] Ms. Henry's evidence is that there was no equivalent office at CAIPO to which Ms. Roberts could have been transferred. In fact, the post of SAO in the Ministry of Legal Affairs had already been filled. As I have already stated, I disagree with the PSC's submission that it was proper for the Registrar to formulate Ms. Roberts duties at CAIPO upon her transfer to the department of CAIPO. I feel constrained to reiterate that this was a patent abdication of the PSC's responsibility. As I have found earlier, section 84 (1) of the Constitution envisages that public officers hold or act in an office in the public service upon their appointment or transfer. It was the PSC's responsibility to ensure that an office or post of equivalent status, responsibility, qualification, rank and/or grade to the office of SAO existed at CAIPO prior to Ms. Roberts' transfer thereto. Ms. Henry, as Registrar of CAIPO, should not have been tasked with the

²² GDAHCVAP2015/0013

responsibility to, in essence, create a post or duties of equivalent status to that of Ms. Roberts' substantive office of SAO.

Finding on the transfer issue

- [46] For all the above reasons, I find that the PSC's decision taken on 14th January 2019 to transfer Ms. Roberts to CAIPO without transferring her to a specific post or an office of equivalent status or grade was unconstitutional, null, ineffective and void.

Whether Ms. Roberts was removed or required to retire from office?

- [47] Another aspect of Ms. Roberts' case is that since she was not assigned to a specific post in the public service, this rendered her status uncertain and in effect, amounted to a removal from her office as SAO. Additionally, counsel for Ms. Roberts, Mr. Hood asks the court to find that her removal from office entitles her to pension and retirement benefits envisaged by section 84(8) of the Constitution. Section 84(8) of the Constitution states:

"Every officer who is required to retire on abolition of his office or for the purpose of reorganization of his Ministry or Department shall be entitled to pension and retiring benefits as if he had attained the compulsory retiring age."

- [48] Mr. Hood relies on **Richard Duncan v The Attorney General**²³ to support his reasoning that Ms. Roberts is entitled to section 84(8) benefits. In **Brian Francis v Attorney General**²⁴, Barrow J (as he then was) adverted to the facts of the case in **Richard Duncan** at paragraph 16 of his judgment:

"Duncan had been forced to go on leave and thereafter to remain on leave indefinitely for the reason given to him that his absence was necessary for improving the operations of the ministry in which he was posted. The Court reasoned that Duncan had been permanently excluded from the performance of his employment and that such exclusion was neither a grant of leave nor a suspension. His permanent removal from office for the stated purpose was not dismissal but rather retirement "from the public service for the purpose of facilitating improvement in the organization of a Department or Ministry to which he belongs." Duncan, unlike the plaintiffs in Smith or the claimant in the instant case, had not been transferred to another place or post, he had been told to go home and not to come back and given no indication that he was ever to come back. As the Court found, in effect he had been sent home permanently. The reason for his removal, that is, to improve the operations of his ministry, was in essence for the reorganization of his ministry and fell within the ambit of section 84(8) of the Constitution."

²³ Grenada Civil Appeal No. 13 of 1997 or other citation [1997] ECSCJ No. 34

²⁴ [2002] ECSCJ No. 194

[49] The facts in this case are different and distinguishable from the facts of **Richard Duncan**. In this case, there is no evidence that Ms. Roberts was sent home, asked to proceed on indefinite leave, or stopped receiving the emoluments of the office of SAO. In fact the PSC insists that she continues to hold the office of SAO. If this is the case, then the most that ought to be claimed and is indeed found is that the PSC's effort to laterally transfer her was flawed and unlawful. There was no evidence in this case of conduct that would trigger the prescriptions set out in section 84(8) of the Constitution. Ms. Roberts' claim for pension and retiring benefits under section 84(8) of the Constitution must therefore fail.

Whether Ms. Roberts was discriminated against by the PSC

[50] Ms. Roberts seeks a declaration that the PSC discriminated against her when it took the decision to transfer her to CAIPO. She claims that this decision breached her rights against discrimination as set out in section 13 of the Constitution of Grenada. Ms. Roberts does not provide the basis for asserting the alleged discrimination against her by the PSC. However, she alludes to allegations that the PSC followed the dictates of the then Prime Minister of Grenada and/or the Government of Grenada when it made its decision to transfer her to CAIPO. This pleading suggests that Ms. Roberts felt that she was being targeted because of perceived differences of political opinion between her and the then Government.

[51] Section 13 of the Constitution of Grenada protects persons from discriminatory treatment based on their political opinion. The section reads:

“1. Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

2. Subject to the provisions of subsections (6), (7) and (8) of this section, **no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.**

3. **In this section, the expression “discriminatory” means affording different treatment** to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, **political opinions**, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.” (My emphasis)

- [52] At trial counsel for Ms. Roberts, Mr. Hood, informed the court that in view of the courts' removal of the Attorney General of Grenada as the second defendant, Ms. Roberts is no longer pursuing her claims against the then Prime Minister. Accordingly, there is no need to consider the allegations against the then Prime Minister, including the allegation that the PSC followed the dictates of the then Prime Minister or his Executive.
- [53] In any event, apart from Ms. Roberts' allegations that she has been subjected to "persecution" by the Government and then Prime Minister, she has not led evidence that shows or tends to show that the Prime Minister or the Executive directly or indirectly influenced the PSC's decision to transfer her or that the PSC abdicated its constitutional responsibility by following dictates from the Prime Minister. The claim on this ground also fails.

Right to work

- [54] It is by now well established that the rights provided under section 1 of the Constitution are not separately justiciable or capable of being enforced. Both the Privy Council in **Blomquist v Attorney-General of the Commonwealth of Dominica**²⁵ and our Court of Appeal in **The Attorney General of Anguilla and others v Bernice Lake, QC and others** have highlighted this principle.
- [55] In **AG v Bernice Lake**, Saunders JA stated at paragraphs 41-42 of the judgment that: "*section 1 is a mere statement of the broad principles...[and]any purported breach of section 1 is not justiciable...The above analysis of Chapter 1 is not novel. Their Lordships in the Privy Council have had occasion to pronounce upon this. See: Blomquist v. Attorney-General of the Commonwealth of Dominica and Grape Bay Limited v. Attorney General of Bermuda.*"
- [56] Counsel for the PSC correctly emphasised that the right to work is not separately justiciable as it is not mentioned as a right for which an individual may seek redress pursuant to section 16 (1) of the Constitution. Therefore, Ms. Roberts fails in her request for a declaration that the PSC's decision to transfer her to CAIPO is a contravention of her right to work. In any event, as I found earlier in this judgment, there is no evidence that Ms. Roberts was removed or required to retire from her office.

²⁵ [1987] A.C. 489 or (1987) 35 WIR 162

Relief

[57] I have throughout this judgment expressed the view that the PSC's decision was an improper or unlawful exercise of its constitutional powers under section 84 of the Constitution. If the PSC intended to transfer Ms. Roberts, it could only do so to a public office of equivalent grade or status. It did not do so and as such the attempt to transfer Ms. Roberts has failed. What then is to happen? In its evidence, the PSC says that Ms. Roberts continues to hold the substantive post of SAO at the Ministry of Health. In view of the fact that the PSC has failed in its attempt to transfer her out of that office whether temporarily or not, this court finds that she continues to retain that office until she is properly removed or transferred therefrom. I therefore hold that –

- (1) the PSC's decision dated 14th January, 2019 to transfer Ms. Roberts to CAIPO was unconstitutional, null and void; and,
- (2) Ms. Roberts was not properly transferred from the post or office of SAO at the Ministry of Health and therefore continues to hold that office until she is properly transferred or removed therefrom.

[58] Ms. Roberts asks the court to award her relief in the nature of general and exemplary damages. Ms. Roberts does not specify in her pleadings or otherwise the basis on which she requests these awards. However I note the Privy Council's guidance in **Innis** that the court may make an award to vindicate the constitutional right breached. The totality of the evidence in this case leads one to conclude that the PSC's actions in this case were both misguided and unlawful. Beyond that, Ms Roberts has not presented any evidence that the PSC set out to target her or to remove her or that the PSC engaged in highhanded or malicious conduct. But the fact that the PSC's deployment of its powers was not invoked with malign intent against Ms. Roberts does not mean that she is not entitled to the sort of award suggested by the Privy Council in **Innis**. As explained by Lord Hope in **Innis** –

“The purpose of the award, whether it is made to redress the contravention or as relief is to vindicate the right. It is not to punish the Executive. But vindication involves an assertion that the right is a valuable one, as to whose enforcement the Complainant herself has an interest. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against further breaches. The fact that it may be expected to do so is something to which it is proper to have regard.”

[59] The contravention in this case, although seemingly driven by a grossly flawed understanding of the duties assigned to the PSC by the Constitution, was nonetheless a flagrant and offensive breach of the constitutional protection afforded to Ms. Roberts as a public officer. The right violated in this case must be vindicated. As explained by Lord Hope in *Innis*, this award is not granted to punish the PSC. But, as his Lordship opined, it is a reflection of the fact “*that the right is a valuable one, as to whose enforcement the Complainant herself has an interest.*” The award is given with the expectation that it will, “*to some extent at least... act as a deterrent against further breaches.*” I award Ms. Roberts the sum of \$10,000.00 as vindictory damages.

Costs

[60] The general principle is that a successful party is entitled to his or her costs²⁶. In assessing prescribed costs pursuant to CPR 65.5, the general rule is that if the claim is not for a monetary sum it is to be treated as a claim for \$50,000.00. In accordance with CPR 65 “Appendix B” the costs are to be assessed at 15% of \$50,000.00 which amounts to \$7,500.00. However, Ms. Roberts is only partly successful on her claim. Therefore she is not entitled to the full award of \$7,500.00 in costs. Ms. Roberts’ costs are reduced by 25%. She is awarded the sum of \$5,625.00 in costs.

Conclusion

[61] The originating motion filed by the claimant, (Ms. Roberts) is granted in part and I order as follows:

- (1) The decision taken by the defendant, the Public Service Commission (PSC), on 14th January 2019 and communicated by letter to Ms. Roberts dated 15th January 2019 to assign and/or transfer Ms. Roberts, to the Corporate Affairs and Intellectual Property Office (CAIPO) with effect 28th January 2019 is unconstitutional, null and void;
- (2) Ms. Roberts was not properly transferred from the post or office of SAO at the Ministry of Health and therefore she continues to hold that post or office until she is properly transferred or removed therefrom;
- (3) Ms. Roberts is awarded the sum of \$10,000.00 as vindictory damages; and,
- (4) The PSC shall pay to Ms. Roberts prescribed costs in the sum of \$5,625.00.

²⁶ CPR 64.6(1)

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar